IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.34 OF 1998

Manipur Upendra Kini .. Applicant/
(Orig.Accused No.1)

Versus

The State of Maharashtra & Anr. .. Respondents.

Shri.Nitin Pradhan, Sr.Counsel for the applicant.
Shri.J.C.Satpute, P.P. for Union of India.
Shri.Y.M.Nakhwa, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE OF RESERVING THE JUDGEMENT : 19/01/2007.
DATE OF PRONOUNCEMENT OF THE JUDGEMENT : 09/04/2007.

JUDGEMENT : -

1. This Criminal Application is directed against the order of the learned Special Judge dated 18th November, 1997 in Miscellaneous Application No.643 of 1997 rejecting the request for discharging the applicant from Special Case No.51 of 1991 on the file of the Court of Special Judge, Greater Bombay.

2. At the outset, it must be said that the Special Case arises out of the allegations against the applicant, who at the relevant time was the Executive Director of Union Bank of India. The applicant is original accused No.1. The charge-sheet is laid in this case by the Central Bureau of Investigation ("CBI" for short).

3. The First Information Report, which has been recorded by Dy.Superintendent of Police, CBI-ACB, Bombay is on the basis that information was received that the applicant and one Anilkumar (Accused No.2) conspired with each other and cheated the Bank to the tune of Rs.25.00 lacs in the year 1986 in the following manner : -

> "1.: M/s.Neha Leasing and Holdings Ltd., New Delhi deals in giving Industrial Equipments on lease and have its offices at Jaipur and New Delhi. Their Bankers were Canara Bank, Corporation Bank and Bank of Rajasthan but had no dealing with Union Bank of India, Bombay. During the months of August, 1986, Shri.Anil Kumar Jaju approached Shri.M.U.Kini with undated letter for granting packing credit limit of Rs.100.00 lakhs against export orders from Russia for Agricultural products. Shri.Anil Kumar Jaju furnished a false Bombay address for the purpose of getting this limit sanctioned from the Union Bank of India, Bombay.
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> 2. On the introduction of Shri.M.U.Kini (A-1)

the Managing Director of Union Bank of India, bombay, the current account in the name of M/s.Neha Leasing & Holdings Ltd. was opened with Bombay Main Office of Union Bank of India. Shri.Anil Kumar Jaju submitted a proposal for advance which was directly entertained by Shri.M.U.Kini (A-1). In the normal course, this proposal could have been marked to DGM/GM(C) for approval. Violating the normal procedure Shri.M.U.Kini (A-1) called for the proposal and accorded sanction for Rs.115.00 lakhs. As per directions of Shri.Kini, the proposal was then processed by Chief Manager (Central Advances & Monitoring Department) for facilities of following limits : -

(i)	Packing Credit	- Rs.25 lakhs
(ii)	Shipping Loan	- Rs.40 lakhs
(iii)	Foreign Bill Purchase	- Rs.65 lakhs

The Chief Manager (Central Advances & Monitoring Dept.) had put conditions that the facilities should be allowed against the Letter of Credit and after satisfactory Credit Report of the firm.

Meanwhile, the Credit Investigation Department of the Bank submitted a Credit Report which was adverse. Inspite of the fact that no L/C was opened a Credit Report was adverse of the firm and that there was no contract between the party and Russian Govt. for export of the item, Shri.M.U.Kini (A-1) sanctioned the facilities and ordered disbursement of packing credit to the extent of Rs.25 lakhs without any security. Subsequently, it was found that this party had no experience in export and they never had any dealing with Union Bank of India, Bombay. The Jaju Group was previously having adverse report with this Bank. Inspite of these facts Shri.M.U.Kini had shown undue favour to this firm by misusing his official position as Executive Director of Union Bank of India, Bombay.

3. After sanction of the credit facilities by Shri.M.U.Kini (A-1), Shri.Anil Kumar Jaju (A-2) withdrew the amount of Rs.25 lakhs through cheque issued in favour of M/s.Vardhman Solvent Extraction Ltd. who had their account in Bank of Rajasthan, Bombay. It is found that Shri.Anil

Kumar Jaju is one of the Directors in the said firm and the amount of Rs.25 lakhs deposited was transferred in the personal accounts of Shri.Anil Kumar Jaju, Shri.M.P.Jaju, his cousin and one Shri.J.P.Lahoti. The firm M/s.Vardhman Solvent Extraction Ltd. was not having any stock of de-oiled soyabean cakes and they were not in position to supply that item. They have prepared the false documents in favour of M/s.Neha Leasing & Holdings Ltd. to enable them to get the loan from Union Bank of India, Bombay.

4. The above facts disclose the commission of an offence by Shri.M.U.Kini (A-1) and Shri.Anil Kumar Jaju (A-2) U/s.120 B r/w. 420 IPC & 5(2) r/w.5(1) (d) of P.C.Act, 1947. Hence, a regular case is registered and the investigation is taken up."

4. After the investigations were complete, C.B.I. laid the charge-sheet alleging commission of offence under the Indian Penal Code and Prevention of Corruption Act, 1947 (P.C. Act, 1947). Applicant is arraigned as accused No.1 in the above special case which was registered

pursuant to the complaint received by C.B.I.

5. The applicant filed a Discharge Application being Miscellaneous Application No.643 of 1997 contending that allegations and charges sought to be framed by C.B.I. are false, frivolous and intended to harass the applicant. The applicant is not guilty of any offence much less those alleged against him. It was contended by the applicant that he drew the attention of the Hon'ble Special Judge to the fact that at the relevant time, he was an Executive Director. He was eligible and qualified to be elevated to the post of Managing Director. It is at that point of time that persons who were aspiring for the post and departmental rivals lodged a false case against him.

6. It is his case that he was not previously familiar with accused No.2 and had not taken any benefit from any of the accused so that any conspiracy can be imputed against him. He has set out various aspects considered by him for sanction of loan to the borrower, in para 10 of his application. He has referred to various other companies of the Jajoo group whose dealings with the bank were not satisfactory and the requirement to attract the customer M/s.Producin Pvt. Ltd. who was earlier the

bank's customer and who had later withdrawn. He has further stated that he acted on the positive recommendations of the branch manager, and the process note dated 13.8.86 of the Chief Manager. He was anxious about bringing Jajoo group in the fold of UBI. He has further shown that he visited the Jaipur regional office to discuss the credit worthiness of the company of accused No.2 on 12.10.86, before he sanctioned the loan on 17.10.86. He has stated in para 12 of his application, how, he ultimately concluded, upon return from Jaipur and during his visit to Delhi and Jaipur, that the loan applied for by accused No.2 should be granted, in view of the credit report of another company being Premier Vegetables Products Ltd. of Jajoo group. However, he did not consider the credit report dated 19.9.86 relating to the company before granting credit finance. He accordingly contends that he bonafide accorded his sanction.

7. It is also contended by the applicant accused No.1 that he performed his duties properly since an equitable mortgage of the land was created. Further, Economic Credit and Guarantee Corporation (ECGC) was to indemnify 75% of the loan. Therefore, if at all there would be a

loss to the Bank, it would be minimum.

8. On the other hand, the prosecution/respondent contended that accused No.1 in his capacity as the Executive Director of UBI sanctioned a loan of Rs.25 lakhs, from the loan of Rs.1 crore applied for by accused No.2 on behalf of accused No.3, despite an adverse credit report dated 19.9.86 in respect of the proposal submitted by accused No.2 to the bank. Accused No.2 misrepresented to the bank that his firm M/s.Neha had sold 5000 M.T. of soyabean extraction for export to a firm in Russia M/s.General Exports (Moscow) claiming that the goods were procured from the firm of Wardhaman. This representation has been made by Neha, of which accused No.2 is the Director, signed by accused No.6 as its authorised representative. The representation made in the letter dated 15.10.86 shows a completed sale of 5000 M.T. of soyabean extraction to the firm in Russia. It recites a contract of the supply of goods by Wardhaman. It was therefore represented to the bank that Wardhaman was to supply goods to Neha which Neha had to export to general exports. Despite the letters dated 15.10.86 stating that 5000 M.T. were sold, nothing is indeed shown to be sold. It is the case of the prosecution that without verifying

such a sale or the contracts mentioned to have been enclosed to the letter dated 15.10.86, accused No.1 sanctioned the loan of Rs.25 lakhs to accused No.2 as a Director of Neha, despite the adverse credit report with regard to the proposal. It is the prosecution case that two of the firms of Jajoo group had shown experience to the bank earlier in honouring their commitments. The prosecution relied upon the stock verification made by the bank by its official D.A. Bhiwandiwala, in the Regional Manager's office, Bombay city shown only 950 bags of soyabean-de-oiled meals having been found in the clearing agent's godown and further 67.612 bags from Wardhaman delivered for local sales only. The report states that stock statement submitted by the borrower differs widely from the statements submitted by the clearing agent. It is the prosecution case that applicant-accused No.1 arbitrarily, on his own, referring to his personal knowledge ordered the amount of loan to be released in favour of accused No.2.

9. It is rejecting these pleas of the applicant that the learned Special Judge concluded that a prima-facie case is made out of criminal conspiracy to cheat Union Bank of India by accused No.2 who applied for a loan which

was sanctioned by applicant accused No.1 and of which the other accused were beneficiaries. The sanction of the loan despite an adverse credit report, prima-facie, shows the role played by the applicant accused No.1. Further, the securities offered for securing the repayment were not investigated and scrutinized by applicant accused No.1. All this shows that there is a prima-facie case and the charge u/s.120(B) r/w. Sec.420 of I.P.C. cannot be said to be groundless. In such circumstances, the discharge application of the applicant accused No.1 is liable to be rejected.

10. It is this judgement and order of the learned Special Judge which is subject matter of challenge in this application filed invoking Sec.482 of the Code of Criminal Procedure.

11. Shri.Pradhan, learned counsel appearing for the applicant submits that the impugned order is vitiated by serious errors apparent on the face of the record because the learned Judge has failed to notice the fundamental aspect of the matter, namely, mere non-payment of the dues by the borrower is not enough to draw a conclusion that a criminal offence has been committed. He submits that the

Bank is not the complainant. There is no allegation that the amount is totally lost to the Bank. Further, there is no allegation that any amount is appropriated by the applicant. He submits that there is no fraud and no case of criminal breach of trust. As far as the offence of cheating is concerned, he submits that the ingredients of the said offence are not fulfilled in the facts of this case. He submits that there is no case made out of any offence under the Prevention of Corruption Act. For all these reasons, the impugned order be quashed and set aside.

12. Shri.Pradhan submits that the applicant joined the Bank in 1955 as a clerk. He was promoted and appointed as General Manager (Credit) in 1983. He was, then, appointed as Executive Director but on contract of three years w.e.f. 21st February, 1986. The applicant was a part of the Board of Directors of the Bank. The Managing Director and the Executive Director were responsible for day-to-day affairs. However, the applicant’s role was limited to credit sanctions, development, procuring human resources and management and infrastructure development. Shri.Pradhan submits that Union Bank of India at the relevant time had 200 branches all over India. He submits

that in the hierarchy, there are several persons and officers. It is not as if the decision is taken by an individual. Shri.Pradhan submits that the sanctioning authority is the General Manager (Credit). This post was vacant at the relevant time i.e. between February 1986 to 31st October, 1986. He submits that sanctioning of loans by a Nationalised Bank is on the basis of the guidelines, which are framed by the Reserve Bank of India. He invites my attention to Clause 2 of the Manual and submits that the limits for sanction are Rs.75.00 lacs. He submits that a Packing Credit Limit (Export) could have been sanctioned to this extent. However, the present facility is for Rs.25.00 lacs. He invites my attention to the guidelines for Non Production Assets (N.P.A.) of 2003. He submits that in pursuance of these guidelines, a proposal for settlement had been accepted by the Bank and the amount therein is paid. He submits that Sec.420 of I.P.C. contemplates a wrongful gain. Shri.Pradhan submits that there is no charge u/s. 5(1)(e) of the P.C. Act against the applicant. He submits that there is no material to show that any favour was shown by the applicant to the accused No.2. There is no business or other relations. He submits that the charge-sheet is silent as far as the amount received from accused No.2. He submits that all

that the prosecution alleges is that the loan should not have been sanctioned and granted in the light of the credit report. However, the applicant, as an Executive Director, took a decision based on his own experience and judgement. He submits that there is no criminal intent and in any event, nothing survives in the special case after the one-time settlement with the borrower. He submits that the alleged error/mis-judgement is not an offence. He submits that such an error or mis-judgement would have been tolerated in proceedings under Banking Regulation Act, 1949. Shri.Pradhan submits that there is no intention to cheat. There is no gain to the applicant neither there is any corrupt motive.

13. Shri.Pradhan has placed strong reliance upon the decision of the Hon'ble Supreme Court reported in **AIR 1996 S.C. 2452 (C.B.I. v/s. Duncans Agro Industries Ltd.)**. He submits that this judgement has been followed subsequently. He submits that if the sanctioning limits are not crossed, then, something more is required to be established. This is a regular banking transaction. There is no mis-representation but a bonafide exercise of authority. The charge-sheet is silent on mis-representation, meeting of mind and fraudulent intent.

He submits that the applicant was approached by the borrower during the course of the banking business. By this fact alone, culpability cannot be presumed. He submits that the borrower has not been charged with any wilful default, fraud and malfeasance and his proposal for settlement is accepted by the bank. Now, when settlement has been arrived at, the prosecution/proceedings in the special case deserve to be quashed.

14. Alternatively, Shri.Pradhan submits that the proceedings are not maintainable as there is no sanction accorded for prosecution in this case. He submits that the sanction has to be previous sanction. Sec.197 of Cr.P.C. and Sec.6 of P.C. Act, 1947 have been referred to by Shri.Pradhan. He submits that the provision requiring sanction is mandatory. He, then, points out Sec.4(3) of the old P.C.Act and Sec.22 of the new P.C.Act i.e. 1988. He submits that in this case, the Applicant is a public servant. He points out that Sec.21 of the I.P.C. and the Criminal Law Amendment Act, 1952 would be relevant in this case. In the present case, the offences alleged are under General Law also. For such offences, Sec.197 of Cr.P.C. is applicable. In such circumstances and when there is no sanction granted, the prosecution

itself is bad in law. Shri.Pradhan has taken me through several provisions of the I.P.C. and Cr.P.C. He submits that the requirement of prior sanction before the Court takes cognizance of the case is mandatory and he relies upon the decision of the Supreme Court reported in **2005 (7) S.C.C. 467 (Cref Finance Ltd. v/s. Shree Shanthi Homes (P) Ltd. & Anr.)**. Shri.Pradhan submits that the applicant was prosecuted and produced before the Special Judge. However, his production after the charge-sheet is filed would not give jurisdiction to the Special Court because there is no sanction accorded in this case at all. The entire exercise, therefore, is without jurisdiction. Shri.Pradhan submits that the FIR would disclose that the only allegation is of cheating and Prevention of Corruption Act. The transaction is of the year, 1986 and the report is of the year, 1989. Shri.Pradhan has taken me through the Credit Report and has contended that even on merits, there is no offence committed by the applicant. There is no cheating. He has invited my attention to Page 93 of the charge-sheet. He submits that the Officers have taken a collective decision. He also relied upon the report of one Shri.Daruwala. He submits that there are some vague statements in the Adverse Credit Report. However, there is no callousness, negligence and the

interest of the Bank is fully secured. He submits that there are contradictions and the allegations in FIR are contrary to the report of Shri.Daruwala. This report exonerates everybody concerned. Thus, the FIR is contrary to the Bank documents. It is in such circumstances, it must be noted that the Bank has not come forward to make any complaint.

15. Finally, Shri.Pradhan submits that the prosecution is of 1989, we are in 2007. The applicant is 74 years of age and, therefore, this Court should exercise its inherent jurisdiction and quash the proceedings in the interest of justice. Shri.Pradhan has relied upon the following decisions.

1] AIR 1996 S.C. 2452 (C.B.I. V/s. Duncans Agro Industries Ltd. Calcutta).

2] 1986 (3) Bom.C.R. 422 (N.Vaghul V/s. State of Maharashtra.

3] Company Cases [Vol.72] 632 (State of Maharashtra V/s.L.D.Kanchan and Ors.

4] (2005) 4 S.C.C. 512 (K.Kalimuthu V/s. State).

5] (2000) 2 S.C.C. 699 (State of Maharashtra V/s.Laljit Rajshi Shah and Ors.

6] Company Cases [Vol.75] 289 (M.V.Kini V/s. State (A.P.).

7] (2005) 7 S.C.C. 467 (Cref Finance Ltd. V/s. Shree Shanthi Homes (P) Ltd. and Anr.

16. Shri.Satpute, on the other hand, has contended that the order on the discharge application is based upon the tentative and prima-facie conclusion. The matter is at preliminary stage. The charge-sheet and other documents show that a prima-facie case is made out. In such circumstances, the discharge application has rightly been rejected. Shri.Satpute submits that the monies and the funds involved in this case are public money and public funds. The charge-sheet, if read as a whole, clearly shows the role of the applicant. He submits that all ingredients of the offences alleged are present. There is a clear case of conspiracy and it would not be proper to hold that this is a simple case of borrower

being unable to or failing to repay the debt. Shri.Satpute has relied upon the impugned order and more particularly the observations at pages 44 to 47 and 52 of the Paper-Book.

17. Shri.Satpute has, then, contended that no sanction u/s.197 of Cr.P.C. is necessary in this case. A Bank employee is not a public servant. He relies upon a decision of the Supreme Court reported in AIR 1987 S.C. 722 (K.Ch.Prasad V/s.Smt.J.Vanalata Devi and Ors.) and a judgement of the Allahabad High Court reported in **1989 (1) Crimes 518 (Bhagwan Prasad Saxena and 2 others v/s. State of U.P. and another)**. Shri.Satpute, then, emphasises that the application states that applicant is working on a contract. He submits that the contract is over and the prosecution is launched subsequently. Hence, sanction under the P.C. Act is not necessary. He relies upon the decision reported in **(1998) 5 S.C.C. 91 (Mohd.Hadi Raja v/s. State of Bihar and another).** He submits that it is not necessary that there should be a personal gain. The loss caused to the Bank itself is sufficient to bring home the charge. He submits that subsequent payment or alleged clearance of dues is not a relevant factor and in any event, the Bank has not come forward to corroborate this

statement made by the applicant. The Bank has not forwarded the details about the extent of the liability together with interest. For all these reasons and the case involves public money, therefore, this Court should refrain from exercising its inherent powers under Cr.P.C. He submits that the facts in the case of **"Duncans Agro"** were distinct and the decision of the Supreme Court is, therefore, distinguishable. In that case, the ingredients of the offences alleged were totally absent. In the facts of that case, the Supreme Court quashed the proceedings. Further, there were no offences alleged under the Prevention of Corruption Act in that case. Therefore, that decision is of no assistance. For all these reasons, the criminal application be dismissed.

18. With the assistance of Shri.Pradhan and Shri.Satpute, I have perused the application and the annexures thereto.

19. All that is to be decided by me is whether the learned Special Judge was in error in rejecting the discharge application preferred by the applicant.

20. Before I arrive at any finding in that behalf, it

would be proper to refer to a decision of the Supreme Court reported in 2000 (5) S.C.C. 623 (Hardeo Singh V/s. State of Bihar and Anr.). In Para 11 of this decision, the Supreme Court observes thus : -

> "11: The criminal purpose in the matter cannot possibly be ruled out as against the appellant. The allegations pertaining to the factum of the habit of the Branch Manager, of receiving illegal gratification from Shri.Ved Prakash Agarawal, however, by itself, in our view, may or may not be sufficient to bring home the charge of conspiracy but that by itself would not authorise the Court to call it a day in regard to the charge of conspiracy in the wake of the factual matrix of the situation at this stage of proceedings. Criminal prosecution does not necessarily mean harassment and in the event prosecution of this nature is allowed to be continued, it would not be in our view a travesty of justice or any undue prejudice or even otherwise prejudicial since ultimately in the event the charge is not proved, he would be acquitted. The counter-affidavit filed by the respondents herein does disclose some

materials for scrutiny against the appellant, as such we are unable to render any assistance to the appellant herein."

21. It is pertinent to note that in the above case, the charges were of cheating and Prevention of Corruption Act.

22. The Supreme Court has also observed that merely because a compromise has reached, that by itself, is no justification for quashing a criminal case. Further, delay is also not a factor, which should be applied in each and every case. Ultimately, it depends upon the facts and circumstances in each case. So also, the age of the accused is not a decisive factor. If the accused is of an advanced age, the Court can always safeguard and protect his interest by issuing appropriate directions including expeditious disposal of a criminal case. However, quashing the case itself is not permissible only for this reason.

23. In the present case, the FIR discloses that M/s.Neha Leasing & Holdings Ltd. was a Delhi based company. Its bankers were Canara Bank, Corporation Bank

and Bank of Rajasthan. This company had no dealing with Union Bank of India, Bombay. However, in August, 1986, Shri.Anil Jajoo (accused No.2) approached the applicant-accused No.1 with a request for sanction of Packing Credit Limit of Rs.100.00 lacs against export order from Russia for agricultural products. It is alleged that this limit was sought by furnishing a false Bombay address of the said company. The applicant introduced the party and current account was opened with Bombay main office of Union Bank of India. The applicant thereafter entertained the proposal from the accused No.2. It is alleged that violating the normal procedure, the applicant sanctioned this Packing Credit Limit for Rs.115.00 lacs. As per the directions of the applicant, the proposal was then processed. The Chief Manager imposed certain conditions for sanction of Packing Credit Limit, shipping loan and Foreign bill purchase facility. In the meanwhile, the Credit Investigation Department (CID) of the Bank submitted an Adverse Credit Report of the party. It appears that there was no L/C opened nor there was any contract between the said M/s.Neha Leasing & Holdings Ltd. and Russian Govt. for export of the items. Yet, applicant sanctioned facility and ordered disbursement of the Packing Credit Limit to the extent of

Rs.25.00 lacs without any security. The party had no experience in export and had never any dealing with Union Bank of India.

24. It is in such circumstances and despite adverse reports that the limits were sanctioned. Therefore, it is alleged that the applicant showed undue favour to the said party by misusing his official position as an Executive Director of Union Bank of India, Bombay. I have already reproduced as to what happened after the credit limit was sanctioned.

25. None can dispute that the applicant was representing a Nationalised Bank. The monies deposited and lying with the Bank are public funds. They are held by the Bankers in Trust. They have to deal with such funds in public interest and for public good. The documents, copies of which are handed in by Shri.Pradhan show that there is an application made for sanction and although the documents accompanying the same show that the company has no branch in Bombay, it approached the applicant in Bombay. Whether the transaction was a bonafide banking and commercial transaction or not cannot be decided at this stage itself. It is not possible to

accept the contentions of Shri.Pradhan that the ingredients of Sec.420 of the IPC r/w.Sec.34 thereof are not made out at all. Further, it is not possible to agree with his contentions that Sec.120 B of IPC would not be attracted in the light of the allegations made in the FIR. The FIR and more particularly Para 13 reproduced above would show prima-facie that documents have been prepared in favour of M/s.Neha Leasing & Holdings Ltd. to enable it to get a loan from the Union Bank of India, Bombay. Similarly, when there are clear notings that the credit report is not satisfactory and branch was advised not to disburse the advance, what led it to sanction the said facilities by imposing the conditions as noted above is not clear at all. That apart, the file notings are that facilities are for one transaction and the same should be released after getting a satisfactory credit report. Therefore, it would not be proper to conclude that a case for discharge has been made out by the applicant before me.

26. The learned Special Judge has taken note of the principles, which have to be applied for considering and deciding a discharge application. In the backdrop of the same, she has concluded that a prima-facie case is made

out against the applicant. It is not possible to agree with Shri.Pradhan that the Chief Manager's note dated 30th December, 1987 would demonstrate that the applicant has not committed any criminal offence. Even if, there are several officials working at the branch and assuming that the responsibility is collective, still, the report of Shri.Daruwala, Chief Manager and the contents thereof cannot be held to be conclusive at this stage. On the other hand, various notings in the documents, perused by me, for a limited purpose, would show that the officers had recommended both civil and criminal action for the reasons set out by them. In such circumstances, I am unable to uphold the contentions of Shri.Pradhan.

27. There is much substance in the contention of Shri.Satpute that a prima-facie case of criminal conspiracy to cheat Union Bank of India has been made out and his reliance upon Para 12 of the impugned order is justified.

28. The learned Judge has concluded that if the principles laid down by the Supreme Court are applied to the facts of the present case, it cannot be said that the charge u/s.120 B r/w. Sec.420 of I.P.C. is groundless.

The discharge application has been rightly rejected. It is not possible to hold at this prima-facie stage that the transaction is a normal and regular banking/commercial transaction. It is material to note that despite an Adverse Credit Report, a loan has been sanctioned and the amount has been disbursed. All arguments of Shri.Pradhan, with respect, are relevant at the trial of the case. At this prima-facie stage, the Court is not considering recording a finding of acquittal. It is only concerned with the aspect as to whether a prima-facie case is made out of the applicant being guilty of the offences alleged against him. The Criminal Application proceeds on the basis that the applicant acted bonafide all throughout. The applicant's case for invoking the powers of the Special Judge u/s.227 of the Cr.P.C. is based upon the fact that the applicant is not guilty at all and that the case is filed on mere suspicion and to harass the applicant. However, the grounds in the application are based upon the merits of the matter and would require evidence being recorded for properly considering them.

29. Similarly, the argument of Shri.Pradhan based upon the plea of sanction also cannot be considered at this stage. Shri.Satpute has controverted these submissions

and contends that sanction was unnecessary. He refutes the submission that the applicant is a public servant. Shri.Satpute has relied upon certain reported decisions on this point including the latest ruling of the Hon'ble Supreme Court in the case of **Prakash Singh Badal and Anr. v/s. State of Punjab and Ors.** reported in **2007 AIR SCW 1415.** In my view, these arguments cannot be considered for the first time and it is clear from a perusal of the order passed by the Court below that they were not raised before it.

30. That apart, I am informed that the charge is now framed inasmuch as the stay granted by this Court is vacated on 16h December, 2002.

31. Even otherwise, the criminal application itself proceeds on the basis that after the application for discharge was rejected, the charges have been framed. Hence, no useful purpose will be served by going into the merits of the charges and all submissions of Shri.Pradhan in that behalf are expressly kept open.

32. I am also not impressed at this stage by the further affidavit filed on behalf of the applicant

enclosing thereto a copy of the letter dated 21st June, 2006. The said letter states that the account of M/s.Neha Leasing & Holdings Ltd. with Union Bank of India, Branch Mumbai discloses certain dues, which has been determined by the Bank under one time settlement has since been paid. To my mind, what impact this fact would have on the prosecution is something which the learned Special Judge must decide and it would be open for the applicant to rely upon this document and the affidavit dated 7th October, 2006 filed in this Court at the trial.

33. In the light of the above, I find that there is no substance in this application. The applicant has been unable to make out any case for invoking this Court's jurisdiction u/s.482 of the Cr.P.C.

34. The decisions, which have been relied upon by Shri.Pradhan have been rendered on the basis of the factual position brought to the notice of the Hon'ble Supreme Court. It is in that light that observations in the decision of Hira Lal Hari Lal Bhagwati (supra) have been made. Para.8 of this decision will have to be read in the backdrop of the factual position before the Supreme Court.

35. The judgement in the case of **"Duncans Agro"** (supra) has been relied upon by Shri.Pradhan but Para 33 of Hira Lal Hari Lal Bhagwati's case would show that observations in the Duncans Agro case reproduced in Hari Lal Hira Lal Bhagwati's case are made once again in the backdrop of the factual position. It is no doubt true that the Hon'ble Supreme Court's decision in Hari Lal Hira Lal Bhagwati's case would be relevant in so far as it lays down the principle and more particularly with regard to vicarious liability in criminal law, criminal conspiracy and the necessary ingredient of the charge of cheating. However, unless these principles are held to be applicable to the present facts, it cannot be hold that the prosecution in this case should be quashed. In Para 38 of the Supreme Court's decision in Hira Lal Hari Lal Bhagwati (supra), the ambit and scope of the powers u/s.482 of the Cr.P.C. have been reiterated. The Supreme Court makes it clear that these powers have to be exercised sparingly and not as a matter of course. The power has to be exercised with great care.

36. It is in this light that I have perused the decision of the Supreme Court in Duncans Agro case

(supra). It is clear from paras 26 to 29 thereof that the Supreme Court upheld the exercise of powers by the High Court u/s.482 of the Cr.P.C. by concluding that the facts justify exercise of such powers. That was essentially a civil dispute. The Bank had already filed suits for recovery of dues and the suits had been compromised on receiving the payments from the concerned company. Therefore, the Supreme Court dismissed the appeal. There cannot be any dispute about the principles laid down for deciding as to whether an offence u/s.405 of IPC is made out or not. However, in my view, the Supreme Court's decision in Duncans Agro is distinguishable on facts.

37. Since, I have kept open the point as to whether the officer of a Nationalized Bank is a public servant or not, in my view, it would not be appropriate to say anything about the issue of sanction. It would be for the learned Special Judge to go into the same. Liberty is reserved to both sides to make their submissions before the learned Judge in that behalf.

38. As a result of the foregoing discussion, the criminal application fails. Rule is discharged.

39. However, considering that the applicant is a senior citizen, the Trial Court to endeavour and dispose of the Special Case as expeditiously as possible.

40. It is also clarified that all observations have been made only for the purpose of considering the correctness of the order on the discharge application and the observations of the Trial Court as well as of this Court shall not in any manner influence the learned Judge while trying the Special Case which shall be tried on merits and in accordance with law.

(S.C.Dharmadhikari, J.)